

**\*OGC Has Reviewed\***

MEMORANDUM FOR: General Counsel

SUBJECT: Implementation of Section 1310, Supplemental Appropriations Act, 1952, As Amended

1. The original Whitten Amendment (Section 1302, Supplemental Appropriations Act, 1951) provided that "...in making appointments in the government service the Civil Service Commission shall make full use of its authority to make temporary appointments in order to prevent increases in the number of permanent personnel...." Executive Order 10180, Establishing Special Personnel Procedures in the Interest of the National Defense, provided that "...all appointments in the executive branch of the Government shall be made on a non-permanent basis except...that permanent appointments are authorized whenever, in unusual circumstances, the Civil Service Commission for positions in the competitive service, or the head of the agency concerned for positions outside the competitive service, determines that permanent appointments are in the interest of the Government..." (emphasis supplied). After consultation with your office, this office prepared a document, signed by the Director of Central Intelligence under the authority contained in E.O. 10180, which provided that all appointments to Agency positions would be made on a permanent basis. A similar document was signed by the Executive Secretary, National Security Council, for that Agency.

2. The revised Whitten Amendment (Section 1310, Supplemental Appropriations Act, 1952) provided that "...the heads of the executive departments, agencies, and corporations shall make full use of their authority to require that initial appointments to positions in and outside the competitive civil service shall be made on a temporary or indefinite basis in order to prevent increases in the number of permanent personnel of the Federal Government above the total number of permanent employees existing on September 1, 1950...." After informal discussion with your office, it was agreed that the previous authorizations signed by the Director and by the Executive Secretary, National Security Council, continued to provide for making permanent appointments in the Agency and to NSC positions, respectively.

3. Section 1310 of the Supplemental Appropriations Act, 1952, as amended by Public Law 763, 83rd Congress, provides in part:

"The Civil Service Commission and the heads of the executive departments, agencies, and corporations shall make full use of their authority to require that initial appointments

to positions in and outside the competitive civil service shall be made on other than a permanent basis in order to prevent increases in the number of permanent personnel of the Federal Government in excess of 10 per centum above the total number of permanent employees on September 1, 1950."

4. Section 204, Executive Order 10577 of 22 November 1954, provides:

"In order to effectuate the purposes of Section 1310 of the Supplemental Appropriations Act, 1952, (Public Law No. 253, 82nd Congress), as amended, the Commission shall, after consultation with the agencies concerned, determine the division of allowable permanent appointments within and between the excepted service and the competitive service."

There is attached a report of an Interagency Committee on Procedures to Maintain the Whitten Amendment Ceiling which was submitted to the Interagency Advisory Group, U. S. Civil Service Commission. This Committee has proposed, for policy decision by the Commission, "That within the excepted service, and until an inventory be taken and studied, the number of permanent employees will be held to 75% of the present non-temporary population in each agency provided no agency now over 75% will be required to cut back".

5. It will be noted that one member of the Committee did not concur in this proposal on the basis of objection to the legal interpretation requiring inclusion of the excepted service under the ceiling.

6. Preparatory to discussions between representatives of this Office and of the U. S. Civil Service Commission as to implementation of Section 1310, Supplemental Appropriations Act, 1952, as amended, in accordance with section 204, E. O. 10577, we would appreciate your views as to whether or not:

a. We can take the position that Agency employees by virtue of their excepted nature are not included under the ceiling established under Section 1310.

b. We can take the position that all staff employees and staff agents, appointed without time limitation, are "permanent employees" within the meaning of Section 1310.

c. We can take the position that, because of the obligations imposed on the Director of Central Intelligence to protect information as to numbers of individuals employed by the Agency, the only procedure which can be applied to the Agency is one which must be administered by the Agency.

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7. Since it has been indicated that the Commission will issue a policy decision on this question in the near future, we would appreciate an early reply.

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*George E. Meloon*  
George E. Meloon  
Deputy Assistant Director  
for Personnel

Attachment

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UNITED STATES CIVIL SERVICE COMMISSION

Office of the Executive Director

Interagency Advisory Group

Washington 25, D. C.

December 14, 1954

Report of the Interagency Committee on  
Procedures to Maintain the Whitten Amendment Ceiling

Background

The new Whitten Amendment provides:

"(a) The Civil Service Commission and the heads of the executive departments, agencies, and corporations shall make full use of their authority to require that initial appointments to positions in and outside the competitive civil service shall be made on other than a permanent basis in order to prevent increases in the number of permanent personnel of the Federal Government in excess of 10 per centum above the total number of permanent employees on September 1, 1950."

Executive Order 10,577 of November 22, 1954, establishing the career-conditional appointment system, provides:

"Sec. 204. In order to effectuate the purposes of Section 1510 of the Supplemental Appropriations Act, 1952, (Public Law No. 253, 82nd Congress), as amended, the Commission shall, after consultation with the agencies concerned, determine the division of allowable permanent appointments within and between the excepted service and the competitive service."

Because the Whitten Amendment provision applies to the total number of permanent employees on September 1, 1950, the Committee found it necessary to determine the number of permanent employees in the excepted service as well as those in the competitive service. The Commission had adequate statistics on the number of permanent employees in the competitive service, but did not know what percentage of the employees in the excepted service in September 1950 were considered to be holding permanent appointments.

The Problem

Since it is anticipated that the new career-conditional appointment system will keep the number of permanent appointments in the competitive service within the limits of the Whitten ceiling in the foreseeable future, the problem of this Committee was to develop recommendations for equitable procedures to control the number of permanent appointments in the excepted service.

The Committee explored the possibility of obtaining sufficient information from the agencies so that a firm figure on the number of "permanent" employees in excepted positions on September 1, 1950 could be derived which, in turn, could be used as a base for the current ceiling on number of "permanent" excepted appointments.

### Work Group Established

The Committee's inquiries as to available information revealed that accurate figures were extremely difficult to secure. A work group was, therefore, established to develop ways and means to:

1. Determine number of employees with "permanent" appointments in the excepted service in September 1950;
2. Determine the current number of "permanent" appointments in excepted positions in September 1954.

Members of this work group were:

Deal, Calvin P. (Chairman)  
Hallman, Paul W.  
Kiehl, Charles M.  
Haid, Max P.  
Kiskind, Bernard D.

Civil Service Commission  
Department of State  
Department of Justice  
Department of Agriculture  
Department of the Air Force

### Findings of Work Group

On December 10, 1954, the work group reported the following information to the full Committee.

The possibility of asking all agencies to determine the number of their employees with "permanent" appointments in the excepted service on September 1, 1950 had been explored. It was found that prior to the initial Whitten Amendment agencies generally did not place tenure restrictions on their non-temporary excepted appointments. It was estimated that about 95 per cent of such appointments were without restrictions and would, therefore, represent "permanent" appointments within the meaning of the Whitten Amendment ceiling.

The work group found it would be impossible to reconstruct exact statistics as of September 1, 1950. However, since the agencies represented on the work group employ over half the excepted work force, the group did not believe that a formal survey request to all agencies would result in an appreciably better estimate.

Using the estimate of 95 per cent on a Federal-wide basis, it was estimated that of the 204,379 non-temporary excepted employees reported on the September 1950 SF-113, about 194,000 had "permanent" tenure. A few thousand excepted employees overseas now included in the SF-113 count were not included in the September, 1950 count. The work group accordingly recommended that the 194,000 estimate be adjusted upward to 200,000 to cover the overseas employees with "permanent" tenure who were not counted in 1950 as Federal employees.

Assuming 200,000 as the September 1950 base figure for "permanent" excepted employees, the "permanent" ceiling for the excepted service would be 220,000 (less 10%). The total Executive Branch ceiling on "permanent" employees would be 1,886,881.

The estimated trend of permanent Federal employment is as follows:

	Total	Executive Branch	Competitive Service	Excepted Service
September, 1950	1,715,346		1,515,346	200,000*
Plus 10%	1,886,881		1,666,881	220,000
September, 1954	1,572,456		1,277,873	294,583**
after mass conversion				
in January, 1955			1,455,800	
January, 1956			1,536,700	
January, 1957			1,539,400	
January, 1958			1,524,000	

\* Estimated

\*\* Includes all "other than temporary" employment

#### Committee Conclusions

The Committee agreed to accept the work group's estimates as the most satisfactory estimates that can be secured.

On the basis of these estimates, 75 per cent of the present number (294,583) of non-temporary excepted employees will be approximately equal to 110 per cent of the estimated number of permanent employees in the excepted service in September 1960.

Discussion centered on (1) the effects upon different agencies of a policy permitting permanent tenure to be granted to not more than 75 per cent of the non-temporary excepted employees; (2) alternative bases for conversion such as conversion of only those non-temporary excepted employees who have three years service, or waiting until spring, when actual figures will be available, before making any conversion; of excepted employees to "permanent" tenure; and (3) whether a higher percentage of conversions could be allowed without exceeding the ceiling for the entire Federal service imposed by the Whitten Amendment and without giving the excepted service an unfair advantage over the competitive service.

The Committee then approved the following proposal, presented in the form of a motion:

"That within the excepted service, and until an inventory can be taken and studied, the number of permanent employees will be held to 75% of the present non-temporary population in each agency provided no agency now over 75% will be required to cut back."

Two Committee representatives did not concur in this conclusion: one objecting to the legal interpretation requiring inclusion of the excepted service under the

willful, and the other on the ground that it would hamper complete and immediate conversion to permanent tenure where all of their employees are under a separate merit system.

The Committee felt that in view of the following considerations, the interim appointments should be conservative:

- (a) The possibility of serious underestimates of the number of conversions to the competitive service.
- (b) The cost of the Post Office Department for 60,000 additional permanent mailmen, and
- (c) The admitted inadequacy of our knowledge of the number of present permanent appointments in the executive service.

**Executive Members**

Wick, John W. (Chairman)  
Casper, Harry  
Cramer, Norman S.  
Clemens, M. Davis  
Cool, Calvin P.  
Howland, Joseph G.  
Malone, Paul W.  
McDonough, Anne  
O'Neil, Charles M.  
Reid, Max P.  
Rosen, Bernard D.  
Simpson, Edward A.

Civil Service Commission  
Atomic Energy Commission  
Department of Labor  
Civil Aeronautics Board  
Civil Service Commission  
Department of the Treasury  
Department of State  
Department of the Interior  
Department of Justice  
Department of Agriculture  
Department of the Air Force  
Department of Defense